IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.3376 OF 2005
WITH
CIVIL APPLICATION NO.3377 OF 2005
WITH
CIVIL APPLICATION NO.3378 OF 2005
IN
FIRST APPEAL ST.NO.16229 OF 2005

M/s.Karanja Machhimar Vividh
Karyakari Sahakari Society Ltd. & Anr. ..Applicants.

V/s.

Krishna Ramchandra Patil. ..Respondent.

Mr.R.K.Mendadkar for applicants.

Mr.Pratap Patil for respondent.

CORAM: A.M.KHANWILKAR,J

DATE : MARCH 3, 2006.

P.C. :

1. Heard counsel for the parties.

2. Delay in filing first appeal as computed by the office is 274 days. The applicants have explained that delay by stating that because of change of management of applicant No.1, society, the impugned order passed by the Ex-officio Commissioner for workmen's Compensation, Raigad-Alibag on 13th August, 2003 remained to be challenged due to inadvertence. The certified copy of the impugned order was applied and made available on 16th June,

2005, whereafter the present proceedings have been filed.

3. This explanation offered by the applicants have been controverted by the respondent by filing reply affidavit. In paragraph 3 of the reply affidavit, it is clearly mentioned that in other two matters decided on the same day, adverse orders came to be passed against the society which were carried in appeal before this court in time. In substance, it is submitted that the excuse given in the subject application by the applicants is unacceptable. If the applicants had carried the matters in appeal in companion matters decided on the same day, there is no reason forthcoming as to what prevented the applicants to file present appeal against the impugned decision in time. Besides, explanation offered in the application to say least is incorrect.

4. What is intriguing to note is that during the course of argument, counsel for the applicants offered justification by pointing out that other two appeals were filed by Mr.Kashinath Khandu Nakhawa alongwith the applicant No.1 as co-applicant, whereas the present appeal has been filed by the society as applicant No.1 and Nilkantha Khandu Nakhawa as

applicant No.2. Affidavit of Nilkanth Nakhawa has not been filed on record to support the case that even he had no knowledge about passing of impugned decision and filing of two appeals arising from the companion matters decided on the very day. The argument of the applicants that there is case on merit cannot be the basis to condone the delay which is around 274 days and no satisfactory explanation has been offered. Rather explanation offered as mentioned earlier is incorrect. In such situation, no indulgence can be shown. Application dismissed.

5. In view of this order, the cognate civil applications and appeal are disposed of accordingly.